

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DAVID TROUPE,

Plaintiff,

V.

WILLIAM SWAIN, et al.,

Defendant.

CASE NO. 16-5380 RJB-DWC

## ORDER ADOPTING REPORT AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of U.S.

<sup>17</sup> Magistrate Judge David W. Christel (Dkt. 64) and the Defendants' Motion to Strike (Dkt. 70).

18 The Court has considered the pleadings filed regarding the Report and Recommendation and

19 Defendants' Motion to Strike, and the remaining record.

19 Defendants' Motion to Strike, and the remaining record.

## 20 The facts are in the Report and Recommendation

The facts are in the Report and Recommendation (Dkt. 64) and are adopted here. The

21 Report and Recommendation recommends that all Plaintiff's claims against all Defendants,

22 except Defendants Stielau and DeHaven, be dismissed without prejudice for failure to exhaust

23 administrative remedies. Dkt. 64. The Report and Recommendation, then, recommends that the

24 Defendants' motion for summary judgment (Dkt. 48) be granted as to all Defendants except

1 Defendants Stielau and DeHaven. Dkt. 64. The Report and Recommendation recommends that  
2 the Motion to Dismiss, filed by some of the Defendants - Van Ogle, Thrasher, Glebe, Roberts,  
3 Herzog, DeMars, Dahne, and L'Heureux - (Dkt. 41) be denied as moot because the claims  
4 against these parties are addressed in the motion for summary judgment.

5 Plaintiff filed Objections to the Report and Recommendation (Dkt. 65), Defendants filed  
6 a Response (Dkt. 67) and Plaintiff filed a Reply to Defendants' Response (Dkt. 69). Defendants  
7 filed a Motion to Strike Plaintiff's Reply (Dkt. 70) arguing that it was not authorized under the  
8 Federal Rules of Civil Procedure or by statute. While the Defendants' motion to strike has merit,  
9 in order to fully consider all issues raised, the motion to strike should be denied and the Court  
10 will consider all pleadings filed by Plaintiff.

11 Plaintiff's objections, reply, and pleadings filed in support thereof, do not provide a basis  
12 to reject the Report and Recommendation. Plaintiff's submissions demonstrate that he failed to  
13 exhaust his administrative remedies on all claims except the claims against Defendants Stielau  
14 and DeHaven based on their October 30, 2014 use of a six-point restraint bed on Plaintiff for  
15 twelve hours. Moreover, Plaintiff makes no showing that he was prevented from filing  
16 grievances or appealing those grievances. The Report and Recommendation (Dkt. 64) should be  
17 adopted.

## ORDER

Accordingly, it is **ORDERED** that:

- The Report and Recommendation (Dkt. 64) **IS ADOPTED**;
  - Defendants' Motion for Summary Judgment (Dkt. 48) **IS DENIED** **WITHOUT PREJUDICE** as to Defendants Stielau and DeHaven and **IS GRANTED** as to all remaining Defendants;

1                   ○ Claims against all Defendants, except Defendants Stielau and DeHaven,

2                   **ARE DISMISSED WITHOUT PREJUDICE;**

3                   ○ Defendants' Motion to Dismiss, In Part, (Dkt. 41) **IS DENIED AS**

4                   **MOOT;**

5                   • Defendants' Motion to Strike (Dkt. 70) **IS DENIED**; and

6                   • This matter **IS RE-REFERRED** to U.S. Magistrate Judge David W. Christel for  
7                   further proceedings consistent with this Order.

8                   The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
9                   to any party appearing *pro se* at said party's last known address.

10                  Dated this 27<sup>th</sup> day of December, 2016.

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13                  ROBERT J. BRYAN  
14                  United States District Judge